

# United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	James B. Moran	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	99 C 7097	DATE	5/5/2000
CASE TITLE	Jerry Woodard vs. Alicia Eubanks etc. et al.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

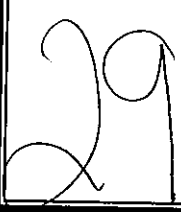
**MOTION:**

## Memorandum Opinion and Order

**DOCKET ENTRY:**

- (1) ☐ Filed motion of [ use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due \_\_\_\_.
- (3) ☐ Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_.
- (4) ☐ Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (7) ☐ Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Enter Memorandum Opinion and Order. Defendants have moved to dismiss. That motion is granted. Accordingly, the remaining claims based upon malicious prosecution are dismissed.

- (11) ☒ [For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court.		number of notices	<b>Document Number</b> 
<input type="checkbox"/> No notices required.			
<input type="checkbox"/> Notices mailed by judge's staff.		<b>MAY 08 2000</b> date docketed	
<input type="checkbox"/> Notified counsel by telephone.		S.B. docketing deputy initials	
<input checked="" type="checkbox"/> Docketing to mail notices.			
<input checked="" type="checkbox"/> Mail AO 450 form.		date mailed notice	
<input type="checkbox"/> Copy to judge/magistrate judge.		mailing deputy initials	
WAH	courtroom deputy's initials	Date/time received in central Clerk's Office	

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**No. 99 C 7097**

**If we use October 31, 1997, as the date when plaintiff was exonerated, that is still far**

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more than a year before suit was filed. The state law malicious prosecution claim against the City of Chicago and the police officers had to be filed within a year after the claim arose, pursuant to the Illinois Local Governmental and Government Employees Tort Immunity Act, 745 ILCS 10/8-101. Accordingly, the state law claims against the City of Chicago and the two officers are dismissed. We also note, in passing, that the Chicago Police Department is not a proper party (and we therefore dismiss it), that punitive damages cannot be assessed against the municipality on a §1983 claim, and that a boilerplate allegation of a “custom, policy, and/or practice” is insufficient to invoke a Monell claim when the pleadings otherwise relate to a single instance.


That still leaves a malicious prosecution claim against Eubanks and a §1983 claim against the individuals with both a false arrest and a malicious prosecution component. The §1983 claim has a two-year limitations period, and the initial arrest was more than two years before filing. Plaintiff advances some creative reasons why the time should be tolled until October 31, 1997, or even until the limitations period ran on the misdemeanor charge, but we think it beyond argument that the claim arose on August 10, 1997. *See Gonzalez v. Entress*, 133 F.3d 551 (7th Cir. 1998). The §1983 claim for false arrest is dismissed against all defendants.

The malicious prosecution claim, whether as an independent state law claim against Eubanks or as a component of the §1983 claim against the individual defendants, is another matter. A §1983 claim for malicious prosecution must satisfy the requirements of a state law cause of action for malicious prosecution (and involve state actors. We assume for now that the conspiracy allegations relating to the officers and Eubanks is sufficient for that purpose).

The proceedings must terminate in favor of the plaintiff in a manner indicative of the plaintiff's innocence. Plaintiff contends that he was exonerated on October 27, 1997, when the court SOL'd the charge upon motion of the state with a direction that it not be reinstated. Defendants disagree.

Whether or not disposition by SOL is a favorable termination indicative of innocence for the purposes of a malicious prosecution claim is a question of Illinois law. And, we think, Illinois law clearly establishes that disposition by SOL will not support a malicious prosecution claim. See Adenekan v. Chicago Police Officers, 1996 WL 734705 (N.D.Ill.); Ingram v. Jones, 1995 WL 745849 (N.D.Ill.). Accordingly, the remaining claims based upon malicious prosecution are dismissed.

May 5, 2000.

  
JAMES B. MORAN  
Senior Judge, U. S. District Court